REMARKS

This is in response to the Office Action, dated June 24, 2003, where the Examiner has rejected claims 1-11 and 28-37. After the present response, claims 1-11 and 28-37 are pending in the present application. Reconsideration and allowance of pending claims 1-11 and 28-37 in view of the following remarks are respectfully requested.

A.   Rejection of Claims 1-7 under 35 U.S.C. § 103(a)

The Examiner has rejected claims 1-7 under 35 U.S.C. § 103(a), as being unpatentable over Smolik et al. (USPN 6,501,736) in view of Bender et al. (USPN 6,002,933). Applicant respectfully disagrees.

Applicant respectfully submits that Smolik lacks a key element of independent claim 1, which recites "a rate implementation module configured to select between the plurality of output rates for coding each of outgoing frames of the signals to achieve an average output rate for the outgoing frames, as determined over a predetermined time period, wherein the average output rate is approximately equal to the target average data rate." Applicant notes that Smolik's approach is quite inefficient due to using pre-determined allocation percentages for full rate and half rate frames. (See tables at col. 6.) As shown in the tables, Smolik reduces the effective rate by coding a certain percentage of frames at half rate, which were otherwise to be coded at full rate. The problem with Smolik's scheme is that it does not consider that if the average output rate, over a period of time, is below the target rate, there is no need to blindly reduce the number of full rate frames. For example, if background noise or silence is being transmitted at a low rate, for a period of time, the average output rate is low and more full rate frames can be transmitted, but, according to Smolik, the average output rate is completely ignored and less full rate frames are transmitted based on the predetermined allocation percentage. In Sharp contrast to Smolik

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that uses predetermined allocation percentages for reducing the effective rate, claim 1 of the present invention offers the advantage of dynamic selecting of one of the plurality of rates, so that <u>average output rate is approximately equal to the target average data rate</u>.

Further, applicant respectfully submits that Bender fails to come close to disclosing, teaching or suggesting the selection of one of the plurality of rates, such that <u>average output rate is approximately equal to the target average data rate</u>. Bender describes an inter-system, soft handoff for operating a cellular telephone system. Unlike Bender, claim 1 of the present does not relate to monitoring the traffic in the system, and the vocoder of claim 1 does not receive or transmit the average rate of good frames. Claim 1 of the present invention claims a rate determination module configured to select a target average data rate based on at least one network parameter and at least one external parameter, and a rate implementation module configured <u>to select between the plurality of output rates</u> for coding each of outgoing frames of the signals to achieve an average output rate for the outgoing frames, as determined over a predetermined time period, <u>wherein the average output rate is approximately equal to the target average data rate</u>. Bender does not disclose, teach or suggest "selecting a target average data rate and selecting between the plurality of output rates, such that the average output rate is approximately equal to the target average data rate", or any portion thereof.

Accordingly, applicant respectfully submits that claim 1, and its dependent claims 2-11 should be allowed.

B.   Rejection of Claims 8-11 and 28-37 under 35 U.S.C. § 103(a)

The Examiner has rejected claims 8-11 and 28-37 under 35 U.S.C. § 103(a), as being unpatentable over Smolik in view of Bender, and further in view of Tiedemann et al. (USPN 5,914,950). Applicant respectfully disagrees.
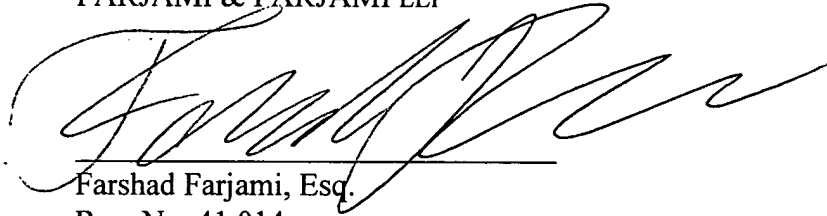
Applicant respectfully submits that claims 8-11 depend from claim 1, and for the same reasons stated above in conjunction with allowability of claim 1, claims 8-11 should also be allowed.

Further, independent method claim 28 has limitations similar to those of vocoder claim 1, and for the same reasons stated above in conjunction with allowability of claim 1, claim 28 and its dependent claims 29-37 should also be allowed.

C.   Conclusion

For all the foregoing reasons, an early allowance of claims 1-11 and 28-37 pending in the present application is respectfully requested. The Examiner is invited to contact the undersigned for any questions.

Respectfully Submitted;
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